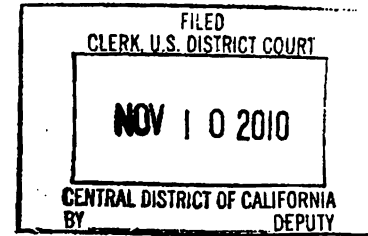


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9
10
11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA**
13 **WESTERN DIVISION**

14 MAURICIO CHAVEZ, individually and
15 on behalf of all others similarly situated,

16 Plaintiff,

17 vs.

18 NESTLÉ USA, INC., a Delaware
19 Corporation,

20 Defendant.

21 VINCENT BONSIGNORE and
22 ZANETTA TADDESSE-
23 BONSIGNORE, individually and on
24 behalf of all others similarly situated,

25 Plaintiffs,

26 vs.

27 NESTLÉ USA, INC., a Delaware
28 Corporation,

Defendant.

) Case No. CV09-9192 GW (CWx)

) Judge George H. Wu

) Magistrate Judge Carla Woehrle

) **FIRST AMENDED CONSOLIDATED**
) **CLASS ACTION COMPLAINT**

) **JURY TRIAL DEMANDED**

29 FIRST AMENDED CONSOLIDATED CLASS ACTION COMPLAINT

Case No. CV09-9192 GW (CWx)

1 Plaintiffs Mauricio Chavez, Vincent Bonsignore and Zanetta Taddesse-
2 Bonsignore (hereinafter, "Plaintiffs"), California residents, bring this class action
3 complaint against Defendant Nestlé USA, Inc. (hereinafter, "Nestlé"), individually
4 and on behalf of a class of all others similarly situated, pursuant to Rule 23 of the
5 Federal Rules of Civil Procedure, who purchased Defendant's Juicy Juice Immunity
6 and/or Brain Development beverages at any time from April 2009 to the present (the
7 "Class Period"). Plaintiffs' allegations against Defendant are based upon information
8 and belief and upon investigation of Plaintiffs' counsel, except for allegations
9 specifically pertaining to the Plaintiffs themselves, which are based upon their
10 personal knowledge.

11 I. JURISDICTION AND VENUE

12 1. This Court has jurisdiction over this class action under 28 U.S.C.
13 §1332(d), which, under the provisions of the Class Action Fairness Act ("CAFA"),
14 provides federal courts original jurisdiction over any class action in which any
15 member of a class of plaintiffs is a citizen of a state different from any defendant, and
16 in which the matter in controversy exceeds in the aggregate the sum of \$5 million,
17 exclusive of interest and costs. Plaintiffs seek certification of a class of all persons
18 who purchased Juicy Juice Immunity and/or Brain Development beverages from April
19 2009 to the present. Such persons reside in the 50 United States and the District of
20 Columbia. Defendant is a citizen of California and/or Delaware. The amount in
21 controversy, exclusive of interest and costs, exceeds \$5 million.

22 2. The Court has personal jurisdiction over Defendant because Defendant
23 Nestlé is headquartered in Glendale, California and thus has sufficient minimum
24 contacts with this District and California. Additionally, jurisdiction is also appropriate
25 as Defendant Nestlé otherwise intentionally avails itself of the California market
26 through its marketing and sales of the products in the State of California and/or by
27 having such other contacts with California so as to render the exercise of jurisdiction
28

1 over it by the California courts consistent with traditional notions of fair play and
2 substantial justice.

3 3. Venue is proper pursuant to 28 U.S.C. §1391(a) because Nestlé is
4 headquartered in this District, its principal offices are located in this District, a
5 substantial part of the development of the advertising and marketing giving rise to the
6 claims occurred in this District and because the Court has personal jurisdiction over
7 Defendant.

8 4. No other forum would be more convenient for the parties and witnesses
9 to litigate this action.

10 5. California law applies to all claims set forth in this Complaint as
11 Defendant Nestlé is a California resident, its principal offices are located in this
12 District, a substantial part of the development of the advertising and marketing giving
13 rise to the claims occurred in this District and all of the misconduct alleged herein was
14 contrived, implemented, and has a shared nexus within California.

15 II. NATURE OF ACTION

16 6. This is a putative class action on behalf of a nationwide class seeking
17 redress for Defendant's deceptive practices in its marketing and advertising of Juicy
18 Juice Brain Development ("Brain Development") and Juicy Juice Immunity
19 ("Immunity") juice products.

20 7. Parents are increasingly health conscious and, as a result, many parents
21 are interested in healthier juice alternatives.

22 8. Juicy Juice is specifically marketed, advertised toward children and their
23 parents who are the purchasers of these products.

24 9. Specifically, during the Class Period, Defendant engaged in a marketing
25 and advertising campaign to promote and sell Brain Development and Immunity juice
26 products. These products were marketed, advertised and sold to Plaintiffs and other
27 Class members as a premium juice product providing substantial added benefits at a
28

1 substantially higher price (20% to 30% higher) than other juice products, including
2 Nestlé's other Juicy Juice beverages.

3 10. Brain Development is deceptively promoted by Defendant as containing
4 DHA and other additives that will enhance brain development in children. Immunity,
5 likewise, is deceptively promoted as containing probiotics that will benefit immunity
6 and digestive health in children. Both products' claims are unsubstantiated by fact
7 and misled Plaintiffs and other Class members into believing that a child's
8 consumption of these products will provide the specific benefits claimed by
9 Defendant.

10 11. The central message of Defendant's marketing and advertising is that
11 Brain Development and Immunity are superior products to other juices and provide
12 benefits such as increased brain development and immunity function. As discussed in
13 more detail herein, Defendant additionally markets, advertises, promotes and sells
14 Brain Development juice product by falsely representing that this product provides the
15 brain development that it does not and that it is 100% juice. Defendant additionally
16 markets, advertises, promotes and sells Immunity juice product by falsely representing
17 that this product provides digestive system and immunity benefits that it does not and
18 that it is 100% juice. Furthermore, Defendant markets, advertises, promotes and sells
19 both products by falsely representing the juice composition of the products. For
20 example, the primary ingredient of the Brain Development "GRAPE" is apple juice,
21 despite the name of the product "GRAPE" and a depiction of grapes which is
22 prominently displayed on the product.

23 12. As a result of the deceptive marketing, advertising, and promotion,
24 Defendant has generated substantial revenues from the sale of Brain Development and
25 Immunity.

26 **III. PARTIES**

27 13. Plaintiff Mauricio Chavez resides in San Diego County and is a citizen of
28 the State of California.

1 14. During the Class Period, in November and December 2009, Plaintiff
2 Chavez purchased both Juicy Juice Immunity and Brain Development beverages.
3 Plaintiff Chavez purchased both beverages at Ralphs Grocery located in San Diego
4 County, California for consumption by his children.

5 15. In purchasing the Brain Development and Immunity juices, Plaintiff
6 Chavez specifically relied upon the representations made on the front of the products
7 and the message conveyed by these products – that by offering these beverages to his
8 children, he would be improving his children’s brain development, immune systems
9 and their digestive health.

10 16. Plaintiffs Vincent Bonsignore and Zanetta Taddesse-Bonsignore reside in
11 Ventura County and are citizens of the State of California.

12 17. Throughout the Class Period, Plaintiffs Bonsignore purchased both Juicy
13 Juice Immunity and Brain Development beverages at Ralphs Grocery and Longs
14 Drugs in Ventura County for consumption by their children, and, in doing so, relied
15 upon false and misleading statements that were prepared by and/or approved by the
16 Defendant through these products’ packaging, marketing materials and advertising
17 media.

18 18. Specifically, the Bonsignore Plaintiffs saw print and TV advertisements
19 as well as packaging statements that made the claim that Juicy Juice Immunity would
20 aid children’s immune systems, which the Bonsignore Plaintiffs took to mean that
21 their children would get sick less often if they drank Juicy Juice Immunity. The
22 Bonsignore Plaintiffs also saw similar advertisements for Juicy Juice Brain
23 Development, which they understood promised that drinking Juicy Juice Brain
24 Development product would help their children’s brains develop, which they took to
25 mean that it contained ingredients that would help them to become smarter or
26 understand things better. All of this advertising influenced the Bonsignore Plaintiffs
27 to buy these products, as did the product packaging which the Bonsignore Plaintiffs
28 read before first purchasing the products.

1 19. Defendant Nestlé is organized and existing under the laws of Delaware,
 2 with its corporate headquarters and principal place of business located at 800 North
 3 Brand Boulevard, Glendale, CA 91203. Nestlé is a citizen of either California and/or
 4 Delaware. Nestlé was and is doing business within this Judicial District. According
 5 to an October 7, 2002 investor presentation, Nestlé generated \$11 billion in sales in
 6 2001, with the beverages division accounting for \$1.3 billion, or 8.4% of sales.
 7 According to the report, Juicy Juice accounted for \$415 million in sales.

8 20. Defendant, upon becoming involved with the manufacture, distribution,
 9 advertising, marketing and sale of Juicy Juice Immunity and Brain Development
 10 beverages knew or should have known that Defendant's claims regarding Juicy Juice
 11 Immunity and Brain Development beverages, including, but not limited to, claims
 12 regarding these products' effect on immunity or brain development, were false and
 13 misleading.

14 21. Defendant is aware that it does not possess requisite scientific evidence to
 15 substantiate Defendant's claims regarding Juicy Juice Immunity and Brain
 16 Development beverages, including, but not limited to, claims regarding these
 17 products' effect on immunity or brain development. Defendant affirmatively
 18 misrepresents, among other things, the effect of Immunity and Brain Development
 19 juice products on immunity and brain development in order to convince the public to
 20 purchase and use these products.

21 V. ALLEGATIONS OF FACT

22 22. In April 2009, Defendant launched two new products, Juicy Juice
 23 Immunity and Juicy Juice Brain Development.

24 23. In the April 6, 2009 press release announcing the products, Defendant
 25 stated:

26 GLENDAL, Calif., April 6 (FoodBizDaily) – Nestlé Juicy Juice is
 27 premiering two products designed to benefit children during different
 28 stages of their growth and development. Juicy Juice Brain Development
 and Juicy Juice Immunity are fruit juice beverages made with natural

1 ingredients, fortified with important nutrients and blended with filtered
2 water to naturally lower the sugar and calorie content.

3 **Juicy Juice Brain Development** is the only children's fruit juice
4 beverage on the market currently offering DHA, which makes it a great
5 first juice beverage choice for 1-2 year-olds. DHA acts as a building
6 block for brain development during a child's first two years of life⁽¹⁾,
7 when their brains triple in size, and experts often recommend infant
8 formula fortified with DHA for children who are not breastfeeding
9 (breast milk is a natural source of DHA)⁽²⁾. During this important
10 developmental phase, Juicy Juice Brain Development, which contains
11 16mg of DHA per serving, is designed to provide children who are old
12 enough to drink juice (according to recommendations by the American
13 Academy of Pediatrics)⁽³⁾ with continued DHA in their diet.

14 **Juicy Juice Immunity** helps support a healthy immune and digestive
15 system by offering beneficial nutrients, including zinc, vitamin C and
16 prebiotic fiber. Both vitamin C and zinc are essential nutrients in a
17 child's everyday diet, as neither can be produced by the body and must
18 be replenished on a regular basis. Fiber is also highly important in a
19 child's diet. In fact, according to The Dietary Guidelines for Americans,
20 the dietary intake of fiber for children may be low enough to be of
21 concern for children and adolescents.⁽⁴⁾ Children three to five years old
22 consume only 11.4 grams of fiber a day on average, while the
23 recommended amount is 25 grams per day.⁽⁵⁾ Juicy Juice Immunity is
24 one of the few juice beverages targeted towards children that contains
25 prebiotic fiber. It is a good source of fiber and contains three grams per
26 serving, which is equivalent to the amount found in a medium-sized
27 apple.⁽⁶⁾

28 "Important nutrients such as DHA and prebiotic fiber are often difficult
to incorporate into a child's diet, particularly after a child has finished
breastfeeding or drinking formula, and before they are able to eat a full
spectrum of food," said Dr. Yinka Davies, M.D. "Juicy Juice Brain
Development and Juicy Juice Immunity are additional resources for
parents to incorporate much needed nutrients into their child's diet, while
still giving them the great tasting fruit juice beverages that they love."

Like all Juicy Juice products, Juicy Juice Brain Development and Juicy
Juice Immunity are made with all-natural fruit juice and no added sugars,
preservatives or artificial flavors or colors. What is unique about these

1 new Juicy Juice products is that the juices are blended with filtered water
 2 (70 percent juice, 30 percent water), which results in fewer calories and a
 3 reduced amount of naturally occurring sugars. The reduction of sugar
 4 and calories through dilution, coupled with essential nutrient
 5 enhancement, make Juicy Juice Brain Development and Juicy Juice
 Immunity a unique and convenient option in the children's beverage
 category.

6 "Juicy Juice recognized the need for a beverage that accommodated
 7 mom's priorities related to her child's diet," said Victoria Nuevo-
 8 Celeste, Nestlé Juicy Juice Marketing Manager. "Juicy Juice Brain
 9 Development and Juicy Juice Immunity offer excellent value for mom.
 10 They provide important nutrients while also helping mom control her
 child's calorie and sugar intake."

11 New Juicy Juice Brain Development is available in Apple and Grape,
 12 and New Juicy Juice Immunity is available in Apple and Berry. Both
 13 beverages are sold in 33.8 fluid ounce (1 liter) Tetra cartons and can be
 14 found in the juice aisle of grocery stores across the United States. Juicy
 15 Juice Brain Development and Juicy Juice Immunity are shelf stable
 16 products, and the suggested retail price is \$2.99. For more information,
 please visit <http://www.juicyjuice.com/Brain-Development-And-Immunity/Default.aspx>.

17 About Nestlé USA

18 Named one of "America's Most Admired Food Companies" in Fortune
 19 magazine for the eleventh consecutive year, Nestlé USA provides quality
 20 brands and products that bring flavor to life every day. From nutritious
 21 meals with Lean Cuisine(R) to baking traditions with Nestlé(R) Toll
 22 House(R), Nestlé USA makes delicious, convenient, and nutritious food
 23 and beverage products that enrich the very experience of life itself.
 That's what "Nestlé. Good Food, Good Life" is all about. Nestlé USA,
 24 with 2007 sales of \$8.25 billion, is part of Nestlé S.A. in Vevey,
 Switzerland - the world's largest food company - with sales of \$90
 25 billion. For product news and information, visit Nestléusa.com or
NestléNewsroom.com.

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16 24. Since the launch of these products in April of 2009, Defendant has
17 advertised, marketed, promoted and sold Juicy Juice Immunity and Brain
18 Development beverages in a manner that falsely and deceptively misrepresents to
19 consumers that the Immunity and Brain Development beverages provide certain
20 enhanced benefits to the immune system and brain development of children. Such
21 representations, as set forth in detail below, are false and misleading to consumers.

22 **Juicy Juice Brain Development Beverage**

23 25. Seeking to cash in on parents' concerns regarding the nutritional content
24 of the juice given to their children, Defendant created and marketed Brain
25 Development as a new way to boost sales.

26 26. The Juicy Juice Brain Development line consists of two products "grape"
27 and "apple."

1 27. Despite being sold under Nestlé’s Juicy Juice brand, which is marketed
2 specifically as containing 100% fruit juice, Brain Development is a juice beverage
3 blended with filtered water – 70% juice, 30% water. Defendant’s only point-of-sale
4 reference to the substantially reduced juice content is through a small, inconspicuous
5 statement on the side panel of the juice package.

6 28. The label of the Brain Development “GRAPE” is deceptive to consumers
7 in that it is designed to imply that the product is grape juice or, at least, consists
8 principally of grape juice. The principal display panel and vignette identify the
9 product as “GRAPE” in large, bold lettering outlined in purple and contains a
10 depiction of grapes; however, grape juice is not the predominant juice in the Brain
11 Development “GRAPE.”

12 29. The Juicy Juice logo in close proximity to the words “GRAPE” and a
13 vignette of grapes leads consumers to believe that Brain Development “GRAPE” is
14 grape juice or predominantly grape juice when, in fact, it is primarily apple juice. The
15 separate statement at the base of the packaging, “Flavored juice blend from
16 concentrate with other natural flavors & added ingredients,” appears in a much
17 smaller font. The manner in which the latter statement is presented makes it far less
18 conspicuous and prominent than the other label statements and vignette and has and is
19 likely to continue to deceive Plaintiffs and the Class as it is less likely to be read or
20 understood by reasonable consumers at the time of purchase.

21 30. The Brain Development label states “DHA – A BUILDING BLOCK
22 FOR BRAIN DEVELOPMENT.”



31. The Brain Development beverage packaging and advertising message deceptively implies to consumers that children consuming the beverage will directly benefit and improve brain development by markedly featuring a distinct pale blue box that contains the statement: “Good to Remember. The human brain triples in volume between birth and two years, so it’s never too early to start good nutrition habits.”

32. The product labeling contains only a miniscule print disclaimer that the DHA purported to assist brain development is limited only “[i]n children under two

1 years old.” Thus, for the majority of children who would be consuming the product,
 2 Defendant essentially concedes that its representations of “Brain Development” are
 3 not true, and are thus deceptive. Specifically, the failure to conspicuously state that
 4 such purported benefits do not apply to any consumer aged 2 or older (those most
 5 likely to consume juice) makes the representation deceptive.

6 33. The product label also directs consumer to the following websites for
 7 additional information: juicyjuice.com and Nestléusa.com.

8 34. In this manner, Defendant’s advertising, marketing, promotion and sale
 9 of Brain Development is deceptive and misleading in that it makes unsubstantiated
 10 claims that the product will actually provide “Brain Development.”

11 35. Defendant’s marketing and advertising of Brain Development includes
 12 references to DHA. DHA is an omega-3 fatty acid and is found in cold-water fatty
 13 fish, seaweed and fish oil supplements. A long chain polyunsaturated fatty acid, DHA
 14 is highly concentrated in the phospholipid bilayer of biologically active brain and
 15 retinal neural membranes.

16 36. Defendant’s claims regarding DHA are unsubstantiated.

17 37. The Food & Drug administration has made the following statement
 18 regarding the efficacy of DHA in brain development:

19 The scientific evidence is mixed. Some studies in infants suggest that
 20 including these fatty acids in infant formulas may have positive effects
 21 on visual function and neural development over the short term. Other
 22 studies in infants do not confirm these benefits. There are no currently
 23 available published reports from clinical studies that address whether any
 24 long-term beneficial effects exist.

25 [http://www.fda.gov/Food/FoodSafety/Product-SpecificInformation/
 26 InfantFormula/ConsumerInformationAboutInfantFormula/ucm108560.htm](http://www.fda.gov/Food/FoodSafety/Product-SpecificInformation/InfantFormula/ConsumerInformationAboutInfantFormula/ucm108560.htm) (last
 27 accessed on November 4, 2010).
 28

1 38. Thus, despite the fact that there is no substantive basis to do so,
 2 Defendant affirmatively represents to consumers in advertising media and marketing
 3 materials that Juicy Juice Brain Development beverage enhances brain development.

4 39. Further, there is an exceedingly small amount of DHA - 16 mg - in a 4 oz
 5 serving of the product. In comparison, a 3 oz serving of salmon provides 600 mg of
 6 DHA.

7 40. The World Health Organization (“WHO”) has suggested 20 mg per kg of
 8 body weight per day for infants to produce any potential efficacy.

9 41. The average 6-month old weighs approximately 16 lbs, or 7.25 kg. Using
 10 the WHO guidelines, the average 6-month old should consume 145 mg of DHA – 9
 11 servings, or ***36 fl oz of Juicy Juice Brain Development beverage per day.***

12 42. The average 1-year old weighs approximately 22 lbs, or 10 kg. Using the
 13 WHO guidelines, the average 1-year old should consume 200 mg of DHA – 12.5
 14 servings, or ***50 fl oz of Juicy Juice Brain Development beverage per day.***

15 43. The American Academy of Pediatrics (“AAP”) recommends limiting
 16 children ages 1-6 to ***4-6 fl oz of fruit juice per day.*** In the policy statement setting
 17 forth this recommendation, the AAP states that excessive juice consumption may be
 18 associated with malnutrition, diarrhea, flatulence, abdominal distention, and tooth
 19 decay. [http://aappolicy.aappublications.org/cgi/content/full/pediatrics; 107/5/1210](http://aappolicy.aappublications.org/cgi/content/full/pediatrics;107/5/1210)
 20 (last accessed November 4, 2010).

21 44. In this manner, Defendant’s averment that Brain Development will
 22 enhance brain development by the inclusion of DHA is misleading. Juicy Juice
 23 deceives consumers into believing that a normal serving of the product will enhance a
 24 child’s brain development by providing an efficacious amount of DHA.

25 45. Defendant has represented, expressly or by implication, that it possessed
 26 and relied upon a reasonable basis that substantiated the representations regarding
 27 brain development set forth in herein at the time the representations were made, when,
 28

1 in fact, Defendant did not possess and rely upon a reasonable basis that substantiated
2 the representations set forth herein, at the time the representations were made.

3 46. Defendant knew that the advertising, marketing and labeling of Brain
4 Development beverage was false and misleading because (a) whether DHA-
5 supplementation promotes brain development is unsubstantiated; and (b) even
6 assuming DHA does provide such a benefit, the amount of DHA provided by a
7 serving of Juicy Juice Brain Development beverage is miniscule.

8 47. Defendant intentionally fails to include any disclaimer on the Brain
9 Development beverage and packaging related to the accuracy of its representations
10 about nutrient content and/or the health benefit claims it affirmatively represents
11 attainable from the amount DHA in each serving of its Brain Development beverage.

12 **Juicy Juice Immunity Beverage**

13 48. Seeking to cash in on parents' concerns regarding the recent H1N1 virus
14 outbreak and the nutritional content of the juice given to their children, Defendant
15 created and marketed Immunity as a new way to boost sales.

16 49. The Juicy Juice Immunity line consists of two products "berry" and
17 "apple."

18 50. Despite being sold under Nestlé's Juicy Juice label and brand, which is
19 marketed specifically as containing 100% fruit juice, Immunity is a juice beverage
20 blended with filtered water - 70% juice, 30% water. Defendant's only point-of-sale
21 reference to the substantially reduced juice content is through a small, inconspicuous
22 statement on the side panel of the juice package.

23 51. The label of the Immunity "BERRY" is deceptive to consumers in that it
24 is designed to imply that the product is berry juice or, at least, principally berry juice.
25 The principal display panels identify the product as "BERRY" in large, bold lettering
26 outlined in blue; however, Immunity "BERRY" does not contain berry juice as the
27 predominant juice, rather it is primarily apple juice.

52. The Juicy Juice logo in close proximity to the words “BERRY” and a vignette of raspberries leads consumers to believe that Brain Development “BERRY” is berry juice when, in fact, it is primarily apple juice. The separate statement at the base of the packaging, “Flavored juice blend from concentrate with other natural flavors & added ingredients,” appears in a much smaller font. The manner in which the latter statement is presented makes it far less conspicuous and prominent than the other label statements and vignette and therefore less likely to be read or understood by reasonable consumers at the time of purchase.



53. The Immunity label states “HELPS SUPPORT IMMUNITY.”

1 54. Defendant affirmatively represents to consumers that Juicy Juice
2 Immunity supports immunity by the inclusion of 100% of the daily value of vitamin C
3 and 10% of the daily value of zinc per serving and contains enough prebiotic fiber to
4 support digestive health.

5 55. Using the term as a marketing tool, without regard to whether it actually
6 delivers any prebiotic benefits, Defendant claims on the Juicy Juice Immunity label
7 “PLUS PREBIOTIC FIBER for Digestive Health.”

8 56. Prebiotics are non-digestible food ingredients that stimulate the growth
9 and/or activity of bacteria in the digestive system which are beneficial to the health of
10 the body. Traditional dietary sources of prebiotics include soybeans, Jerusalem
11 artichoke, jicama, chicory root, raw oats, unrefined wheat, unrefined barley and
12 yacon.

13 57. Juicy Juice Immunity contains gum arabic. Gum arabic is a natural gum
14 made of hardened sap taken from two species of the acacia tree and is used as, among
15 other things, a thickener in soft drink syrups, hard gummy candies, marshmallows and
16 M&Ms chocolate candies.

17 58. Gum arabic has only recently been shown to have a prebiotic effect and
18 only when 10 g are consumed daily by adults. There has been no specific research
19 with infants or children. The Nutrition Facts panel on the Juicy Juice Immunity label
20 indicates that an 8 oz serving contains only 3 g of dietary fiber. It is unclear what
21 proportion of this amount is gum arabic.

22 59. Juicy Juice Immunity beverage prominently features the word
23 “IMMUNITY” on a large pink banner on the product container. The container also
24 features the statement: “VITAMIN C & ZINC for Immunity.”

25 60. Juicy Juice Immunity beverage contains 100% Daily Value of vitamin C
26 – just as Defendant’s complete line of Juicy Juice products do – but it only contains
27 10% Daily Value of zinc– per 8 oz serving.

1 61. Defendant's claims on the Immunity beverage label that the product
2 supports immunity is a claim that Defendant cannot substantiate and affirmatively
3 deceives consumers into thinking that Immunity prevents illness any more than other
4 Juicy Juice products or the products of other manufacturers.

5 62. Moreover, all Juicy Juice products contain the same percentage, 100%
6 DV, or higher, of vitamin C as Juicy Juice Immunity. As such, the statement
7 "VITAMIN C & ZINC for Immunity" on the Immunity label is misleading as it
8 causes consumers to believe that Immunity beverage has a greater amount of vitamin
9 C than standard Juicy Juice.

10 63. Juicy Juice Immunity beverage does not improve a child's immune
11 system or in any way improve immunity. At all relevant times, Defendant was aware
12 that the Immunity Beverage did not materially improve or support a child's immunity.

13 64. Defendant launched the Immunity Beverage at a time when it was aware
14 of concerns regarding the pandemic H1N1 flu, and misleadingly marketed the
15 beverage to consumers as a way to improve and support their child's immune system.

16 65. Defendant has represented, expressly or by implication, that it possessed
17 and relied upon a reasonable basis that substantiated the representations regarding
18 immunity set forth herein at the time the representations were made, when, in fact,
19 Defendant did not possess and rely upon a reasonable basis that substantiated the
20 representations set forth herein, at the time the representations were made.

21 66. Defendant knew that the advertising, marketing and labeling of Juicy
22 Juice Immunity beverage was false and misleading because (a) Immunity contains no
23 more vitamin C than standard Juicy Juice and only 10% DV zinc; and (b) assuming
24 gum arabic does provide a prebiotic benefit, the amount of gum arabic provided by a
25 serving of Juicy Juice Immunity beverage is miniscule.

26 67. Defendant intentionally fails to include any disclaimer on the Brain
27 Development beverage and packaging related to the accuracy of its representations
28 about nutrient content and/or the health benefit claims it affirmatively represents

1 attainable from the amount of DHA in each serving of its Brain Development
2 beverage.

3 **Defendant' Additional Marketing and Advertising Practices**

4 68. In addition to the false and misleading statements contained on the
5 products' packaging, Defendant's nationwide advertising campaign falsely touting the
6 purported health benefits of Juicy Juice Brain Development and Immunity beverages
7 has been massive and comprehensive, conveying the false and misleading statements
8 described herein to consumers throughout the United States. Defendant conveyed the
9 false and misleading claims regarding Juicy Juice Brain Development and Immunity
10 beverages to Plaintiffs and other consumers throughout the United States primarily
11 through commercials, newspapers, magazines, direct mail, the internet, point-of-sale
12 displays, and on the product labels.

13 **Nestlé's Marketing and Advertising on the Internet**

14 69. Defendant uses the dedicated website, juicyjuice.com, to promote Juicy
15 Juice products, including but not limited to, Juicy Juice Immunity and Juicy Juice
16 Brain Development.

17 70. Defendant created a section of juicyjuice.com, juicyjuice.com/Brain-
18 Development-And-Immunity, to exclusively promote Juicy Juice Immunity and Juicy
19 Juice Brain Development.

20 71. Defendant misrepresents the benefit of the Brain Development beverage
21 by stating on juicyjuice.com, among other things:

22 Juicy Juice Fruit Juice Beverage is enhanced with DHA, an essential
23 building block for brain development, and comes in delicious apple and
24 grape flavors. So you can help her shine a little more every day.

25 <http://www.juicyjuice.com/Products/Brain-Development.aspx> (last accessed,
26 December 10, 2009).

27 72. Defendant maintains a section on juicyjuice.com titled "Tips & Articles"
28 which is designed and intended to persuade consumers of the benefits of the Brain

1 Development and Immunity beverages. In fact, stating in part: “[g]et great tips and
 2 the latest expert information on how you can help support your child’s early childhood
 3 brain development and immune system.”

4 73. Defendant maintains a section on juicyjuice.com titled “Products” and a
 5 subsection of “FAQs” that represents the following to consumers, in part, about
 6 relevant Juicy Juice Brain Development and Immunity beverages:

7
 8 **1. What is in NESTLÉ JUICY JUICE BRAIN DEVELOPMENT
 Fruit Juice Beverage?**

9
 10 NESTLÉ JUICY JUICE BRAIN DEVELOPMENT Fruit Juice
 11 Beverage contains DHA, also known as Docosahexaenoic acid, which is
 12 an omega-3 fatty acid present in many parts of the body. There are 16
 mg of DHA per 4 fl. oz serving.

13 **2. How much and at what age can I begin serving NESTLÉ JUICY
 JUICE BRAIN DEVELOPMENT Fruit Juice Beverage to my child?**

14
 15 The best time for your child to start drinking fruit juice beverages is
 16 when he or she is ready to start drinking from a cup. This typically
 17 happens around 6 to 8 months of age. While fruit juice beverages can
 18 certainly be a part of a healthy and varied diet for your child, the
 19 American Academy of Pediatrics (AAP) recommends limiting to 4-6 fl.
 oz of fruit juice daily for children ages 1-6. If you are unsure, consult
 your pediatrician.

20 **3. What is DHA and where does it come from?**

21 Docosahexaenoic Acid (DHA) is a type of Omega-3 fatty acid. It is
 22 found naturally in most tissues of the body and accounts for up to 20
 23 percent of total brain mass. The DHA in NESTLÉ JUICY JUICE
 24 BRAIN DEVELOPMENT Fruit Juice Beverage is derived from highly
 refined tuna fish oil.

25 While DHA is naturally found in breast milk, once infants move on to
 26 eating more solid foods, primary food sources of DHA include oily fish
 27 (like herring, salmon, sardines, rainbow trout, canned tuna), and organ
 28 meats. More food products are now being fortified with DHA so that
 children and adults can benefit from this important nutrient.

1 **4. Why is DHA good for my child?**

2 DHA is a building block for the brain in infants; according to research,
3 DHA may help support early-age brain and eye development.

4 DHA is naturally found in breast milk, and experts often recommend
5 infant formula fortified with DHA for children who are not
6 breastfeeding. (Kris-Etherton 2007) **JUICY JUICE BRAIN**
7 **DEVELOPMENT** Fruit Juice Beverage with DHA is a smart choice for
8 parents who are ready to introduce juice beverages into their baby's diet.

8 **5. Is there such a thing as too much DHA?**

9 Adequate intake of alpha-linolenic acid (ALA), the parent compound of
10 docosahexaenoic acid (DHA) for kids ranges from 500 mg per day for
11 infants to 1600 mg per day for teen-aged boys. Because the US
12 population generally consume lower intakes of fish (and hence DHA)
13 compared to populations in some other countries, it is unlikely that one
14 will get too much DHA in the diet.

14 **6. My kids like eating fish. Do they need more DHA?**

15 Health authorities recommend eating two to three fish meals weekly for
16 overall health. For variety in the diet, it may be advantageous to get
17 DHA from various food sources. **JUICY JUICE BRAIN**
18 **DEVELOPMENT** Fruit Juice Beverage is a kid-friendly juice beverage
19 which provides 16mg of DHA per 4 fl. oz serving.

19 **7. What is in NESTLÉ JUICY JUICE IMMUNITY Fruit Juice**
20 **Beverage?**

21 NESTLÉ **JUICY JUICE IMMUNITY** Fruit Juice Beverage contains
22 Vitamin C and Zinc which are essential for a healthy immune system,
23 and Prebiotic Fiber to help maintain a healthy digestive system.

24 **8. How much and at what age can I begin serving NESTLÉ JUICY**
25 **JUICE IMMUNITY Fruit Juice Beverage to my child?**

26 The best time for your child to start drinking fruit juice beverages is
27 when he or she is ready to start drinking from a cup. This typically
28 happens around 6 to 8 months of age. While fruit juice beverages can
29 certainly be a part of a healthy and varied diet for your child, the

1 American Academy of Pediatrics (AAP) recommends limiting to 4-6 fl.
2 oz of fruit juice daily for children ages 1-6. If you are unsure, consult
3 your pediatrician.

4 **9. What is zinc?**

5 Zinc is an essential mineral that supports a healthy immune system and
6 promotes the normal growth and development of a child. A serving of
7 NESTLÉ **JUICY JUICE IMMUNITY** Fruit Juice Beverage contains
8 10% of the daily value for Zinc.

9 **10. What is prebiotic fiber? Is that the same as probiotics?**

10 Prebiotic fiber is a non-digestible carbohydrate that promotes the growth
11 of beneficial bacteria (probiotics) that already live in the digestive tract.
12 By helping the good bacteria flourish, a balanced environment in the
13 digestive system is achieved and this helps maintain a healthy digestive
14 system.

15 **11. What is Gum Acacia and what is the source?**

16 Gum acacia, also called gum arabic, is a type of prebiotic fiber that is
17 widely used in the food industry as an emulsifier and stabilizer. It is
18 purified from the resin of Acacia trees in Africa.

19 74. Juicyjuice.com contains a section that offers an “Immunity Quiz” and a
20 “Brain Development Quiz.” At the close of the immunity quiz, consumers are urged
21 to:

22 Now, try a delicious way to support a healthy immune system with new
23 Juicy Juice Immunity Fruit Juice Beverage, containing vitamin C and
24 Zinc, plus prebiotic fiber for digestive health.

25 75. At the close of the “Brain Development Quiz,” consumers are told that:

26 Juicy Juice Fruit Juice Beverage with DHA- the best first juice you can
27 give your baby. Made with natural ingredients and no sugar added,
28 you’ll be pleased with the nutrients. Your child will love the taste.

29 <http://www.juicyjuice.com/Brain-Development-And-Immunity/FAQs.aspx> (last
30 accessed, December 10, 2009).

1 76. Defendant utilizes a Twitter feed, twitter.com/juicyjuiceusa, into ads
 2 placed in various places on the Internet, particularly websites specifically targeting
 3 mothers such as BabyCenter.com and CafeMom.com. The ads pose questions such as
 4 “How do you stimulate your child’s mind?” to which mothers – or anyone – can tweet
 5 responses that will show up in the ads.

6 77. Defendant maintains a channel on YouTube, www.youtube.com/
 7 juicyjuice, which contains programs entitled “Early Childhood Brain Development
 8 with Dr. Yinka Davies,” “Healthy Digestion with Dr. Yinka Davies” and “Five Ways
 9 to Boost Immunity with Dr. Yinka Davies,” as well as a number of games, such as tic
 10 tac toe, for children.

11 78. Defendant’s YouTube channel contains the following statement on the
 12 front page:

13 NESTLÉ® JUICY JUICE® is excited to introduce two new products.
 14 Introducing NEW Juicy Juice Brain Development and Immunity Fruit
 15 Juice Beverages! For more than 25 years, Juicy Juice has helped parents
 16 raise healthy kids by providing them with a wide variety of nutritious
 17 and delicious juice options.

18 <http://www.youtube.com/user/juicyjuice> (last accessed, December 10, 2009).

19 79. Defendant represents Dr. Yinka Davies as an “Expert” and state the
 20 following about her:

21 We’re here to help by offering engaging, informative and educational
 22 videos covering some of the most important topics in child development
 23 featuring our noted pediatric expert, Dr. Yinka Davies.

24 An award-winning pediatrician, Dr. Davies practices Pediatric
 25 Gastroenterology near Sacramento, CA and she’s a Clinical Adjunct
 26 Professor at Stanford University. In addition to her many clinical
 27 achievements, she brings the experience of yet another major
 28 accomplishment-motherhood.

 Juicy Juice is very proud to have Dr. Davies as their distinguished
 expert. So let Dr. Davies share her tips and advice with you!

1 <http://www.juicyjuice.com/Experts/Expert-Videos.aspx> (last accessed, December 10,
2 2009).

3 **Damages to Plaintiffs and the Class**

4 80. Defendant's inaccurate, false, deceptive and misleading advertising,
5 marketing, promotion and labeling, including but not limited to, statements regarding
6 nutrient content health benefits, packaging benefits, and use of expert advice and
7 affirmations, and other such related misconduct alleged herein, directly and
8 proximately caused Plaintiffs and the Class to suffer injury and damage to their
9 property. Plaintiffs and the Class have suffered financial loss, been deprived of
10 property, and have otherwise been damaged by Defendant's misconduct. As a result
11 of Defendant's deceptive marketing scheme, as set forth herein, Plaintiffs and the Class
12 were misled into paying more for Juicy Juice Immunity and Juicy Juice Brain
13 Development beverages than they would have but for Defendant's misrepresentations,
14 resulting in suffering injury in fact and a loss of money or property.

15 81. Neither Juicy Juice Immunity nor Juicy Juice Brain Development
16 beverages actually provide the immunity and brain development health benefits
17 affirmatively represented to consumers.

18 82. In fact, Juicy Juice Immunity and Juicy Juice Brain Development
19 beverages actually contain less fruit juice, are no more nutritious and offer no
20 additional health benefits as compared to, for example, substantially cheaper Juicy
21 Juice products:

Juicy Juice Harvest Surprise	100% juice	46.0 oz - \$3.29	\$0.07 per oz
Juicy Juice	100% juice	46.0 oz - \$2.59	\$0.06 per oz
Brain Development	70% juice	33.8 oz - \$2.99	\$0.09 per oz
Immunity	70% juice	33.8 oz - \$2.99	\$0.09 per oz

Moreover, considering the fact that Brain Development and Immunity were only 70% juice, the actual price paid per ounce of juice *was \$0.12*.

IV. CLASS ALLEGATIONS

83. Plaintiffs bring claims pursuant to Federal Rule of Civil Procedure 23 individually and on behalf of the following nationwide consumer class (the "Class"):

All purchasers of Nestlé's Juicy Juice Immunity and/or Brain Development beverages from April 2009 to present. Specifically excluded from this Class are Defendant; the officers, directors or employees of Defendant; any entity in which Defendant has a controlling interest; and any affiliate, legal representative, heir or assign of Defendant; also excluded are any federal, state or local governmental entities, any judicial officer presiding over this action and the members of his/her immediate family and judicial staff, and any juror assigned to this action.

84. The Class is sufficiently numerous, as it includes thousands of persons who have purchased Juicy Juice Immunity and/or Brain Development beverages. Thus, joinder of such persons in a single action or bringing all members of the Class before the Court is impracticable for purposes of Rule 23(a)(1) of the Federal Rules of Civil Procedure. The disposition of the Class members' claims in this class action will substantially benefit both the parties and the Court.

85. The Class is readily ascertainable through Defendant's business records. Notice can be provided to Class members by publication of notice by internet, radio, newspapers and magazines.

86. There are questions of law and fact common to the Class for purposes of Federal Rule of Civil Procedure 23(a)(2). Defendant's advertising, marketing, labeling and promotional practices were supplied uniformly to all members of the Class, so that the questions of law and fact are common to all members of the Class. All Class members were and are similarly affected by having purchased Juicy Juice Immunity and/or Brain Development beverages for their intended and foreseeable purpose as promoted, marketed, advertised, packaged and labeled by Defendant as set

1 forth in detail herein, and the relief sought herein is for the benefit of Plaintiffs and
2 other members of the Class.

3 87. Plaintiffs assert claims that are typical of the claims of the entire Class for
4 purposes of Federal Rule of Civil Procedure 23(a)(3). Plaintiffs and all Class
5 members have been subjected to the same wrongful conduct because they have
6 purchased Juicy Juice Immunity and/or Brain Development beverages that do not
7 possess the benefits that Defendant represents. Plaintiffs and the Class have thus all
8 overpaid for Juicy Juice Immunity and/or Brain Development beverages and/or
9 purchased Juicy Juice Immunity and/or Brain Development beverages that they
10 otherwise would not have.

11 88. Plaintiffs will fairly and adequately represent and protect the interests of
12 the other Class members for purposes of Federal Rule of Civil Procedure 23(a)(4).
13 Plaintiffs have no interests antagonistic to those of other Class members. Plaintiffs are
14 committed to the vigorous prosecution of this action and have retained counsel
15 experienced in litigation of this nature to represent them. Plaintiffs anticipate no
16 difficulty in the management of this litigation as a class action.

17 89. Class certification is appropriate under Federal Rule of Civil Procedure
18 23(b)(2) because Defendant has acted on grounds that apply generally to the Class, so
19 that final injunctive relief or corresponding declaratory relief is appropriate respecting
20 the Class as a whole. Defendant's advertising, marketing, labeling and promotional
21 practices were supplied uniformly to all members of the Class.

22 90. Class certification is appropriate under Federal Rule of Civil Procedure
23 23(b)(3) because common questions of law and fact substantially predominate over
24 any questions that may affect only individual members of the Class. Among these
25 common questions of law and fact are:

26 (a) whether Defendant misrepresented or omitted material facts in
27 connection with the promotion, marketing, advertising, packaging, labeling and sale of
28 the Juicy Juice Immunity and Brain Development beverages;

1 (b) whether Defendant represented that Juicy Juice Immunity and
2 Brain Development beverages have characteristics, benefits, uses or qualities that they
3 do not have;

4 (c) whether Defendant knew or should have known that Defendant's
5 claims regarding Juicy Juice Immunity and Brain Development beverages, including,
6 but not limited to, claims regarding these products' effect on immunity or brain
7 development, were false and/or misleading;

8 (d) whether Defendant's acts and practices in connection with the
9 promotion, marketing, advertising, packaging, labeling, distribution and sale of Juicy
10 Juice Immunity and Brain Development beverages violated California Business &
11 Professions Code §17200 *et seq.*, and/or California Business & Professions Code
12 §17500 *et seq.*

13 (e) whether Defendant's acts and practices in connection with the
14 promotion, marketing, advertising, packaging, labeling and sale of the Juicy Juice
15 Immunity and Brain Development beverages unjustly enriched Defendant at the
16 expense of, and to the detriment of, Plaintiffs and other Class members; and

17 (f) whether Defendant's conduct, as set forth herein, injured members
18 of the Class and whether they have been damaged by the wrongs complained of
19 herein, and if so, the measure of those damages and the nature and extent of other
20 relief that should be provided.

21 91. Proceeding as a class action provides substantial benefits to both the
22 parties and the Court because this is the most efficient method for the fair and efficient
23 adjudication of the controversy. Class members have suffered and will suffer
24 irreparable harm and damages as a result of Defendant's wrongful conduct. Because
25 of the nature of the individual Class members' claims, few, if any, could or would
26 otherwise afford to seek legal redress against Defendant for the wrongs complained of
27 herein, and a representative class action is therefore appropriate, the superior method
28 of proceeding, and essential to the interests of justice insofar as the resolution of Class
FIRST AMENDED CONSOLIDATED CLASS ACTION COMPLAINT Case No. CV09-9192 GW (CWx)

1 members' claims is concerned. Absent a representative class action, Class members
 2 would continue to suffer losses for which they would have no remedy, and Defendant
 3 would unjustly retain the proceeds of its ill-gotten gains. Even if separate actions
 4 could be brought by individual members of the Class, the resulting multiplicity of
 5 lawsuits would cause undue hardship, burden and expense for the Court and the
 6 litigants, as well as create a risk of inconsistent rulings which might be dispositive of
 7 the interests of the other Class members who are not parties to the adjudications
 8 and/or may substantially impede their ability to protect their interests.

9 **FIRST CLAIM FOR RELIEF**
 10 **(Violation of California Business & Professions Code**
 11 **Section 17200 *et seq.* - Unfair Conduct)**

12 92. Plaintiffs reallege each and every allegation contained above as if fully
 13 set forth herein and, to the extent necessary, plead this cause of action in the
 14 alternative.

15 93. Under California Business & Professions Code §17200, any business act
 16 or practice that is unethical, oppressive, unscrupulous and/or substantially injurious to
 17 consumers, or that violates a legislatively declared policy, constitutes an unfair
 18 business act or practice.

19 94. Defendant has engaged, and continues to engage, in conduct which is
 20 immoral, unethical, oppressive, unscrupulous and/or substantially injurious to
 21 consumers. This conduct includes, but is not limited to: (1) representing to consumers
 22 that consumption of Juicy Juice Brain Development beverage will provide brain
 23 development benefits that it does not; (2) representing to consumers that consumption
 24 of Juicy Juice Immunity beverage will provide immune system benefits that it does
 25 not; (3) representing to consumers that consumption of Juicy Juice Immunity beverage
 26 will provide digestive system benefits that it does not and; (4) misrepresenting to
 27 consumers that Juicy Juice Immunity and Juicy Juice Brain Development beverages
 28 are 100% juice. Defendant deceives consumers into purchasing Juicy Juice Immunity

1 and Juicy Juice Brain Development beverages in the mistaken belief that, among other
 2 things, the persons consuming these products will realize actual health benefits.
 3 Defendant's scheme was and is immoral, unethical, oppressive, unscrupulous and/or
 4 substantially injurious to consumers.

5 95. By committing the acts alleged above, Defendant has engaged in unfair
 6 business acts and practices which constitute unfair competition within the meaning of
 7 California Business & Professions Code §17200.

8 96. Plaintiffs and the Class have all paid money for Juicy Juice Immunity and
 9 Juicy Juice Brain Development beverages. However, Plaintiffs and the Class did not
 10 obtain the full value of the advertised products due to Defendant's misrepresentations
 11 regarding the health benefits of said products. Accordingly, Plaintiffs and the Class
 12 have suffered injury in fact and lost money or property as a result of Defendant's acts
 13 of false advertising.

14 97. An action for injunctive relief and restitution is specifically authorized
 15 under California Business & Professions Code §17203.

16 98. Plaintiffs have standing to pursue this claim as Plaintiffs have suffered
 17 injury in fact and have lost money or property as a result of Defendant's acts as set
 18 forth above.

19 99. Class members have suffered injury in fact and have lost money or
 20 property as a result of Defendant's actions as set forth above.

21 **SECOND CLAIM FOR RELIEF**
 22 **(Violation of California Business & Professions Code**
 23 **Section 17200 *et seq.* - Fraudulent Conduct)**

24 100. Plaintiffs reallege each and every allegation contained above as if fully
 25 set forth herein and, to the extent necessary, plead this cause of action in the
 26 alternative.
 27
 28

1 101. Under California Business & Professions Code §17200, any business act
2 or practice that is likely to deceive members of the public constitutes a fraudulent
3 business act or practice.

4 102. Defendant has engaged and continues to engage in conduct that is likely
5 to deceive Plaintiffs and members of the Class, all of whom are members of the
6 general public. This conduct includes, but is not limited to: (1) representing to
7 consumers that consumption of Juicy Juice Brain Development beverage will provide
8 brain development benefits that it does not; (2) representing to consumers that
9 consumption of Juicy Juice Immunity beverage will provide immune system benefits
10 that it does not; (3) representing to consumers that consumption of Juicy Juice
11 Immunity beverage will provide digestive system benefits that it does not; and
12 (4) misrepresenting to consumers that Juicy Juice Immunity and Juicy Juice Brain
13 Development beverages are 100% juice.

14 103. The health benefits that were the basis of the misrepresentations of
15 Defendant described herein as especially important to the purchasers of Juicy Juice
16 Immunity and Juicy Juice Brain Development beverages including Plaintiffs and the
17 Class.

18 104. By committing the acts alleged above, Defendant has engaged in
19 fraudulent business acts and practices, which constitute unfair competition within the
20 meaning of Business & Professions Code §17200.

21 105. Plaintiffs and the Class have all paid money for Juicy Juice Immunity
22 and/or Juicy Juice Brain Development beverages.

23 106. However, Plaintiffs and the Class did not obtain the full value of the
24 advertised products due to Defendant's misrepresentations regarding the health
25 benefits of said products. Accordingly, Plaintiffs and the Class have suffered injury in
26 fact and lost money or property as a result of Defendant's acts of false advertising.

27 107. An action for injunctive relief and restitution is specifically authorized
28 under California Business & Professions Code §17203.

THIRD CLAIM FOR RELIEF
(Violation of California Business & Professions
Code Section 17500 *et seq.*)

108. Plaintiffs reallege each and every allegation contained above as if fully set forth herein and, to the extent necessary, plead this cause of action in the alternative.

109. Plaintiffs have standing to pursue this claim as Plaintiffs have suffered injury in fact and have lost money or property as a result of Defendant's actions as set forth above.

110. Class members have suffered injury in fact and have lost money or property as a result of Defendant's actions as set forth above.

111. Defendant engaged in advertising and marketing to the public and offered for sale Juicy Juice Immunity and Juicy Juice Brain Development beverages on a nationwide basis, including in California.

112. Defendant engaged in the advertising and marketing alleged herein with intent to directly or indirectly induce the sale of Juicy Juice Immunity and Juicy Juice Brain Development beverages to customers like Plaintiffs and the Class.

113. Defendant's advertisements and marketing representations regarding the characteristics of Juicy Juice Immunity and Juicy Juice Brain Development beverages were false, misleading and deceptive as set forth more fully above.

114. At the time Defendant made and disseminated the statements alleged herein, Defendant knew, or should have known, that the statements were untrue or misleading, and acted in violation of Cal. Bus. & Prof. Code §17500 *et seq.*

115. Plaintiffs seek restitution, injunctive relief, and all other relief allowable under Cal. Bus. & Prof. Code §17500 *et seq.*

FOURTH CLAIM FOR RELIEF
(Violation of California Business & Professions
Code Section 17200 *et seq.* - Unlawful Conduct)

116. Plaintiffs reallege each and every allegation contained above as if fully set forth herein and, to the extent necessary, plead this cause of action in the alternative.

117. The violation of any law constitutes an unlawful business practice under California Business & Professions Code §17200.

118. As detailed more fully in the preceding paragraphs, the acts and practices alleged herein were intended to or did result in the sale of the products in violation of California Business & Professions Code §17500 *et seq.*

119. California's Sherman Food, Drug, and Cosmetic Law (the "Sherman Law"), Health & Safety Code §109875 *et seq.* provides that food is misbranded "if its labeling is false or misleading in any particular." *Id.* at §110660.

120. Additionally, California has adopted as its own and the Sherman Law incorporates "[a]ll food labeling regulations and any amendments to those regulations adopted pursuant to the [FDCA]" as "the food labeling regulations of this state." Cal. Health & Safety Code, §110100(a). The FDCA prohibits the misbranding of food using language identical to that of the Sherman law.

121. FDCA regulations also prohibit the making of claims "suggest[ing] that a food because of its nutrient content may help consumers maintain healthy dietary practices" when, as in the case of Brain Development and Immunity, are juice beverages that have been fortified to provide the claimed nutritional benefits. 21 C.F.R. §§101.65(d)(1)(i) and 104.20.

122. The Sherman Law defines a "person" as "any individual, firm, partnership, trust, corporation, limited liability company, company, estate, public or private institution, association, organization, group, city, county, city and county, political subdivision of this state, other governmental agency within the state, and any

1 representative, agent, or agency of any of the foregoing.” Cal. Health & Safety Code,
 2 §109995. Defendant Nestlé is a corporation and, therefore, a “person” within the
 3 meaning of the Sherman Law.

4 123. Thus, the business practices alleged above are also unlawful under Cal.
 5 Bus. & Prof. Code §17200, *et seq.* by virtue of violating the Sherman Law.

6 124. By violating these laws, Defendant has engaged in unlawful business acts
 7 and practices which constitute unfair competition within the meaning of Business &
 8 Professions Code §17200.

9 125. Plaintiffs and the Class have all paid money for Juicy Juice Immunity
 10 and/or Juicy Juice Brain Development beverages. However, Plaintiffs and the Class
 11 did not obtain the full value of the advertised products due to Defendant’s
 12 misrepresentations regarding the health benefits of said products. Accordingly,
 13 Plaintiffs and the Class have suffered injury in fact and lost money or property as a
 14 result of Defendant’s acts of false advertising.

15 126. An action for injunctive relief and restitution is specifically authorized
 16 under California Business & Professions Code §17203.

17 **FIFTH CLAIM FOR RELIEF**
 18 **(Unjust Enrichment)**

19 127. Plaintiffs reallege each and every allegation contained above as if fully
 20 set forth herein and, to the extent necessary, plead this cause of action in the
 21 alternative.

22 128. At all times relevant hereto, Defendant deceptively marketed and sold
 23 Brain Development and Immunity to Plaintiffs and the Class.

24 129. Plaintiffs and members of the Class conferred upon Defendant non-
 25 gratuitous payments for Brain Development and Immunity that they would not have
 26 due to Defendant’s deceptive advertising and marketing. Defendant accepted or
 27 retained the non-gratuitous benefits conferred by Plaintiffs and members of the Class,
 28 with full knowledge and awareness that, as a result of Defendant’s deception,

1 Plaintiffs and members of the Class were not receiving products of the quality, nature,
 2 fitness or value that had been represented by Defendant and reasonable consumers
 3 would have expected.

4 130. Retaining the non-gratuitous benefits conferred upon Defendant by
 5 Plaintiffs and members of the Class under these circumstances made Defendant's
 6 retention of the non-gratuitous benefits unjust and inequitable.

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiffs and the Class pray for relief as follows:

9 A. That the Court determine that the claims alleged herein may be
 10 maintained as a class action under Rule 23(a), (b)(2) and (b)(3) of the Federal Rules of
 11 Civil Procedure;

12 B. That the Court adjudge and decree that Defendant has engaged in the
 13 conduct alleged herein;

14 C. That Defendant be permanently enjoined and restrained from, in any
 15 manner, directly or indirectly, continuing, maintaining, or engaging in the unfair,
 16 unlawful, and/or deceptive practices alleged herein;

17 D. For restitutionary disgorgement pursuant to, without limitation,
 18 California Business & Professions Code §§17200 *et seq.* and 17500 *et seq.* and
 19 principles of unjust enrichment;

20 E. For declaratory and injunctive relief pursuant to, without limitation,
 21 California Business & Professions Code §§17200 *et seq.* and 17500 *et seq.*;

22 F. That Plaintiffs and the Class members be awarded restitution, including
 23 disgorgement of profits obtained by Defendant as a result of its acts of unfair,
 24 unlawful or deceptive practices and acts of unjust enrichment and breach of the
 25 covenant of good faith and fair dealing;

26 G. That Plaintiffs and the Class members be awarded both pre-and post-
 27 judgment interest at the maximum allowable rate on any amounts awarded;

1 H. That Plaintiffs and the Class members recover their costs of suit,
2 including reasonable attorneys' fees as provided by law; and

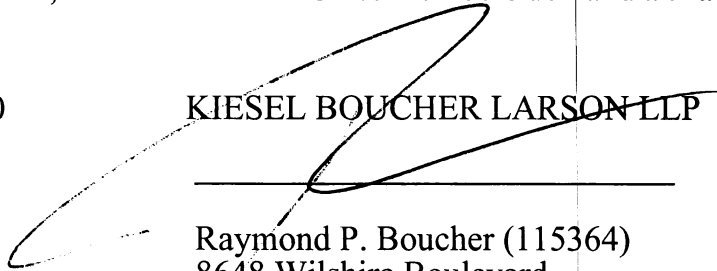
3 I. That Plaintiffs and the Class members be awarded such other and further
4 relief as may be necessary and appropriate.

5 **JURY DEMAND**

6 Pursuant to Rule 38 of the Federal Rules of Civil Procedure and the
7 Constitution of the United States, Plaintiffs and the Class members demand a trial by
8 jury for all issues so triable.

9 Dated: November 10, 2010

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CERTIFICATE OF SERVICE

I am employed in the City and County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 8648 Wilshire Boulevard, Beverly Hills, California 90211-2910.

I served on November 10, 2010, the foregoing document described as: **FIRST AMENDED CONSOLIDATED CLASS ACTION COMPLAINT** on the interested parties by electronically filing with the Court a true and correct copy thereof and causing a true and correct copy to be delivered to the addressed as follows:

****PLEASE SEE ATTACHED SERVICE LIST****

☒

VIA ELECTRONIC MAIL:

By sending such document(s) addressed to the person(s) on whom it is to be served.

☐

VIA U.S. MAIL:

I am readily familiar with the firm's practice for collection and processing of correspondence for mailing. Under that practice, such envelope(s) would be deposited with the U.S. postal service with postage thereon fully prepaid, at Beverly Hills, California.

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VIA PERSONAL DELIVERY:

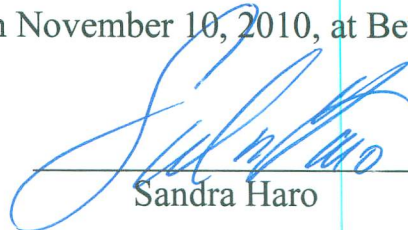
I personally delivered such envelope(s) by hand to the offices of the addressee pursuant to CCP § 1011.

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FEDERAL:

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct and was executed on November 10, 2010, at Beverly Hills, California.


Sandra Haro

SERVICE LIST

Chavez/Bonsignore v. Nestle USA, Inc., et al.
Case No. CV09-9192 GW (CWx)

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